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REMARKS/ARGUMENTS

In an Office Action dated April 25, 2005, all Claims 1-24 and 26-29 were rejected for various reasons.

Specifically, Claims 1-24 and 27 were rejected under 35 USC §101 for being directed to non-statutory subject matter. At paragraph 5 on page 2 of the Office Action, the Examiner stated that the various steps could be done by a person as a mental step or using pencil and paper.

While Applicants do not agree with the Examiner's remarks, in an effort to expedite prosecution of this application, Claims 1-24 and 26-27 have been amended to explicitly recite a computer memory as being the "tangible medium" on which the "storing" acts of Claim 1 are performed. Support for this limitation is found throughout Applicants' originally-filed specification including, for example, page 4 line 25, page 9 lines 4-20, page 16 lines 9-12, and page 26 lines 17-21. Claim 1 is further amended to add an act of "performing a build". Support for this amendment is also found throughout Applicants' originally-filed specification including, for example, page 8 at line 11, page 10 at lines 16-18, page 13 at line 21. In view of these amendments, Applicants respectfully request the Examiner to withdraw the rejection of Claims 1-24 over 35 USC §101.

Claim 27 was also rejected under 35 USC §101 (see the bottom of page 2 of the Office Action) for reciting "a signal embedded in a carrier medium" which the Examiner stated was directed to non-statutory subject matter because it is not being tangibly embodied in a manner so as to be executable. Applicants respectfully traverse this rejection. Specifically, Claim 27 explicitly requires presence, in the claimed signal, of software instructions to perform the method of Claim 1. Therefore Claim 27 is directed to a practical application of electromagnetic energy. See MPEP § 2106 IV (B)(1)(c) which states in pertinent part:

However, a signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature. See *O'Reilly*, 56 U.S. at 114-19; *In re Breslow*, 616 F.2d 516, 519-21, 205 USPQ 221, 225-26 (CCPA 1980).

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There is no legal requirement that the instructions be executable. Hence, Applicants respectfully request the Examiner to withdraw the §101 rejection of Claim 27.

Claims 1-24 and 26-29 also stand rejected under 35 USC §112 because the Examiner said it is not understood why there is "periodically recurring time in future". The Examiner explained that "Time or a specific moment can occur only once (i.e. there is ONLY one "4/15/2005, 2:32 pm")." Applicants respectfully disagree with the interpretation of "periodically recurring times" to be limited to only "a specific moment" (in the Examiner's words). This term, as originally-recited in Claim 1, uses the word "times" in plural, meaning there are multiple times. The claim term "periodically recurring times" was amply illustrated in the specification, for example, at page 2, lines 28-29 "if the periodically recurring times happen on a weekly basis, i.e. every Wednesday." See also the specification at page 14, lines 2-10 which states in pertinent part:

... For example if ticks are occurring every Wednesday, many members of the development team may decide on Tuesday evening to make available their current version at the next tick which is the next day. Other developers may select a future tick, a Wednesday three weeks from now if the changes that have been made are not to be used during the three-week timeframe. ...

As will be apparent to the skilled artisan, every Wednesday ("in future" as stated in Claim 1) means this Wednesday (assuming today is Tuesday as stated above), the Wednesday of next week, the Wednesday which will happen in 2 weeks, the Wednesday which will happen in 3 weeks, and so on ad infinitum. Hence Applicants submit that there is nothing indefinite or confusing about the meaning of "periodically recurring times in future" as stated in originally-filed Claim 1.

However, in view of the Examiner's remark that "this limitation is not given any patentable weight", it appears that the prosecution on the merits is being constrained by the Examiner's failure to understand the term "periodically recurring times in future". Hence Applicants have now replaced this term with "a plurality of times that are to occur in future; wherein each time in said plurality of times is separated from another time in said plurality of times by a common period." Support for this amendment is found throughout

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the originally-filed specification, including, for example, at page 4 lines 18-24. See also FIG. 3 which shows three times in such a plurality of times, namely time 24B, time 24A, and time 24D. Note further that time 24B is separated from time 24A by the period T (shown at the top), and note also that time 24D is separated from time 24A also by the same period T. Regarding how these times 24B, 24A and 24D are used to identify one of multiple versions of a component as a "release" version, see the three examples (of three components) described at page 11 line 15 to page 12 line 11 of the specification.

Should the Examiner continue to have difficulty in understanding the limitations of Claim 1, which has hampered the Examiner's ability to apply prior art to the claims, the Examiner is respectfully requested to conduct an Examiner Interview by calling the undersigned at (408) 982-8200, ext. 203.

Claim 1 was rejected for anticipation by US Patent 6,282,709 granted to Reha. In rejecting Claim 1, the Examiner stated (see the top of page 4 of the Office Action) that Reha teaches Claim 1's storing of two associations for two versions of a given component in column 4 at lines 35-42 and 49-58, which are reproduced below:

A "What's New" text file is then defined at step 202 for each of the software components listed in step 200. In the exemplary embodiment, the What's New text file describes the history of the particular software component. For example, this file may include information regarding all the previous versions of the particular component including version number and date of release. ...

This step includes identifying the OEM's product version for the latest release of each particular software component. At step 208, the version checking method for the software component files is defined. This step includes defining the number of files to be version checked, the version checking method and version checking method parameters.

For example, the version checking method can include any of the following: 1) check local file(s) size and time and date stamp; 2) check version resource embedded in the file;

As seen from the above text, Reha at most discloses a file that includes a version number and a date of release, of previous versions of a particular software component. Even

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assuming that Reha discloses a file that holds a release date of a current version, note that Reha's release date has already occurred, i.e. it is date in the past. There is no indication by Reha that a release date that is to occur in future is to be stored, as recited in the first limitation in Claim 1 (which limitation is present in both originally filed Claim 1 and current Claim 1).

Even assuming Reha discloses a release date in future, there is no indication that Reha's dates are separated from one another by a common period. As noted above, one example of a plurality of times having a common period of a week occurs every Wednesday, and in this example the plurality of times includes the Wednesday of next week, the Wednesday which will happen in 2 weeks, the Wednesday which will happen in 3 weeks, and so on. No example even remotely similar to this example is found in Reha's patent. Hence, Reha fails to disclose or suggest multiple versions having associated therewith times selected from a plurality of times with a common period separating each time from another time as recited in Claim 1. Therefore, Claim 1 is believed to recite a distinction over Reha that is worthy of patent protection.

The Examiner also stated that the "identifying" limitation of Claim 1 is fully disclosed by Reha at column 3, lines 55-67, column 4 lines 35-42 and lines 49-58, column 5 lines 4-10 and lines 57-67. See the third paragraph on page 4 of the Office Action. Reha's text at two of these cites has been reproduced above, and Reha's text at the two remaining cites is reproduced below:

computer system 100, as described earlier.

Software update server 14 includes a software component definition file 20 and software component storage 22. The software component definition file 20 may be created via any well known text editor and supports communications with software update manager 12 to provide a convenient way for an original equipment manufacturer (OEM) to distribute software component files of their choice over the Internet.

Software component definition file 20 contains a list of software component files that are currently the most recent versions of the various software components.

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The date is the file modification date and is formatted as string DD/MM/YYYY where DD represents day, MM represents month and YYYY represents year. Processor 102 extracts the above information from software component definition file 20 and compares the information to the same information for the corresponding file(s) stored in computer system 100 ...

Described above has been the steps for an OEM to setup software update server 14 to support distribution of software over the Internet. When an OEM produces an update to a software component, the software update definition file 20 is updated to indicate the new software version. Generally, this includes updating the What's New information at step 202, modifying the software component version at step 206 and copying the software files to software component storage 22. However, the new software update may require performing any one or all of steps 200-214, depending on the various parameters of the new software component.

As can be seen from the text reproduced above (on pages 10, 11 and 12 of this Amendment), Reha at most identifies software components that are currently the most recent versions, but there appears to be no indication by Reha that such identification is to be done based on a comparison with current time. Therefore, Claim 1 is patentable over the teachings of Reha for this additional reason.

In view of the above remarks, Applicants respectfully request the Examiner to withdraw the prior art rejection of Claim 1. Claims 2-24 and 26-30 are believed to be patentable for one or more reasons of the type discussed above.

In rejecting Claims 2-6, 10-14, 16, 21-24 and 26, 27 and 29 the Examiner cited to the same text in Reha as the text which has been quoted above (on pages 10, 11 and 12 of this Amendment). Applicants respectfully traverse the Examiner's citations as being an "omnibus" rejection which does not take into account the individual limitations of the dependent claims. Note that two illustrative examples of the Examiner's failure to cite prior art are discussed below, and in view of such defects Applicants request the next Office Action to be made "non-final" so that patentability arguments can be fully developed, for appeal.

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As a first example of the "omnibus" nature of the Examiner's rejection, see the bottom of page 4 of the Office Action where Claim 5 was stated by the Examiner as being fully disclosed in Reha's column 4 lines 35-42 and lines 49-58. This cited text from Reha's patent has been reproduced on page 9 of this Amendment. As can be seen by a quick review there is no indication of a record of a database in this text. In fact the word "database" is nowhere to be found in the entire Reha patent. Yet Claim 5 was rejected for being anticipated by Reha !!! This anticipation rejection is without basis, and was made apparently because the Examiner did not give any patentable weight to the "database" limitation in Claim 5.

As a second example of the "omnibus" nature of the Examiner's rejection, see the middle of page 5 of the Office Action where Claim 13 was stated by the Examiner as being fully disclosed in Reha's text at column 3, lines 55-67, column 4 lines 35-42 and lines 49-58, column 5 lines 4-10 and lines 57-67. The cited text from Reha's patent has been reproduced above (on pages 10, 11 and 12 of this Amendment). As can be seen by a quick review there is no indication of a record of a "milestone time" in this text. Once again, the word "milestone" is nowhere to be found in the entire Reha patent. Yet Claim 13 was rejected for being anticipated by Reha.

The Examiner also rejected Claims 6, 9 and 17-20 as being obvious over Reha's patent, after taking "Official Notice" about limitations recited in these claims. Even assuming the Examiner is correct in the existence of such features in the prior art, the Examiner provided no prior art citation for a motivation to add such features to Reha's invention, which is another defect in the Office Action.

Applicants respectfully traverse the Examiner's rejections of these claims, again for being not supported in the prior art. If any of these limitations is well known in the art, then Applicants are entitled to evidence which proves the Examiner's position. In this context, Applicants respectfully draw the Examiner's attention to the following evidentiary requirement to be met: "If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence." See MPEP 2144.03.

If the Examiner is unable to find an appropriate reference for the limitations of each of Claims 2-24 and 26-30 then these claims must be allowed to proceed to issuance. If


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any claim is rejected in the next Office Action, then Applicants respectfully request the Examiner to cite an appropriate reference, for each rejected claim considering that claim's individual limitation. Moreover, if an obviousness rejection is made of any claim, the Examiner must cite to a prior art reference for the motivation. In this context, see MPEP 707.07(f) which states "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."

For the above reasons, Applicants respectfully request allowance of all pending claims. Should the Examiner have any questions concerning this response, the Examiner is invited to call the undersigned at (408) 982-8203.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office to the fax number 703-872-9306 on July 3, 2005.

 July 3, 2005
Attorney for Applicant(s) Date of Signature

Respectfully submitted,



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